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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1974
No. _____

Joseph M. Rice
Petitioner,

v.

United States of America
Respondent.

PETITION FOR WRIT OF CERTIORARI, OR OTHER APPROPRIATE WRIT, TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Petitioner, Joseph M. Rice, prays that a writ of certiorari, or other appropriate writ, issue to review the judgment of the United States Court of Customs and Patent Appeals in the matter of the decision rendered March 21, 1974.

OPINIONS BELOW

Patent application serial No. 740 649 rejected Dec 12, 1969 (mailed Jan 19, 1970) under USC 102 as being "clearly anticipated" by either Browne, Veaux, de Boer, et al, or Van der Meulen.

Final rejection in Patent Office August 18, 1970, under USC 102 and 112 as being anticipated by either Kidd, Van der Meulen or Jenkins.

Rejected by Board of Appeals May 1, 1972 pro se before Andrews, Strader, and Bennett, Examiners-in-chief-claims 1 and 2 do not satisfy requirements of USC 112 and claims 1 and 2 anticipated by either Kidd, Van der Meulen or Jenkins. Found free of reversible error.

Request granted for re-examination but denied making any change therein. Board stated they had no authority to consider claims not entered by the examiner.

Decision of Board affirmed by U.S. Court of Customs & Patent Appeals March 21, 1974, rightful claims not before the Board and not acted upon.

Review requested and a 10-page brief in support submitted. May 9th petition denied. Mandate to be issued May 17, 1974.

Stay of mandate extended until May 28th. Hurriedly wrote petition to Supreme Court and submitted same June 3rd.

Stay mandate continued until final disposition of the case by Supreme Court.

Petition returned by Court along with $100 check. Printed and bound 40 copies of new brief and submitted on August 5th. All copies returned along with fee again because I had used single spaced ELITE type. August 14th began printing 40 new copies as per suggestion I use PICA and double space.

STATEMENT OF THE CASE

Patent application entered in records June 27, 1968, and attorneys were: Clarence A. O'Brien & Harvey B. Jacobson. All necessary fees were paid. After a delay of 17 months I complained to the Patent attorneys, and a letter dated October 20, 1969, stated in part:

"However, there is a procedure whereby the examination of application can be accelerated by way of a petition to the Commissioner of Patents to make the exam special. Should the application(petition) be granted, the Patent Office will initially examine the application out of its chronological turn and prosecution of the case can be concluded in approximately three to four months from the date the petition is granted...the charge incident to the proposed 'petition to make special' plus prosecution of the application to a conclusion before the Patent Office will be #350.00."

I did not understand this "petition to make special" and on Feb 14th of 1970 I requested permission to prosecute to a conclusion my own patent application. My letter appended.

On January 19th of 1970 the first rejection was suffered under the original nine (9) claims. Examiner told me if I were to re-word the two claims mentioned in the nine claims, they would consitute two separate inventions. I declined for two reasons: I had my hands full with this application and secondly I feared an interference suit from an unknown source which would deplete my energies and resources.

My letter of March 9th of 1970 attached to my two new claims appended. Examiners Office Action of April 30, 1970, indicated he had not received my new claims even though I had mailed them as a registered letter and they were signed for at the Patent Office. (this occured four times!"

I then sent two copies immediately. On December of 1970 I sent instrustions and

and four (4) new claims in the form of an amendment. I also requested they re-number the claims as it was their duty to do so.

In this interval I was under the final rejection and a muddled situation developed which resulted in my case being taken to the Appeals Board without my new claims attached. I was within the time interval to modify them and did not realize my new claims were not before the Board until 18 months later when I, at that time, complained to the Commissioner of Patents that none of my letters were acknowledged.

In a three (3) page letter dated jul 28, 1972, the assistant Commissioner acknowledged all my letters at one time (after Appeal Board decision) and stated on page 1 :

> "...further, appellant did not at any time until after the decision of the Board call to the attention of the

attention of the Patent Office the fact that no response to the proposed amendment dated Dece er 29th of 1970 had been received. Accordingly it does not appear that appellant's appeal was in any way prejudiced by the non-entry of his proposed amendment."

NOTE: THIS IS THE CRUX OF THE WHOLE MATTER!

I remind this Court that I did not know the Board had not received the amendment, so how could I call attention to the non-entry?

Furthermore, I claim that I did not know and that my case was highly prejudiced. The appended letter will indicate a clerical error and other pertinent points in my favor.

The gist of all my writings after this episode presented a very basic argument which all the various courts have ignored. They have evaded my argument entirely aside from the matter of the claims.

In other words because of a simple error

and lack of an understanding of legal maneuvers on my part, the final rejection by the Patent Office was stayed on the original assumption. Their minds are closed on a simple formality and the case has every need to be completely reviewed.

I remind all concerned, also, that my first rejection was suffered because my claim one (1) was not in a one-sentence structure. (no rule on this in any book)

QUESTIONS PRESENTED

1. Amendments to my claims after first rejection were not entered due to a clerical error and said error was compounded by ambiguity in rules of the Court stating one set of laws for the layman(due to omission) and another set of laws which would allow an attorney to modify the claims to the Patent Examiner's satisfaction.

2. The Patent Office, et al,had not recog-

nized my plea in my statement to the effect that I objected to patents being imported from one subtitle to another and not applicable to my application. Their rejection being couched in such a language that stated: "...regardless if cited inventions were not in the same category or subtitle the cited patents 'suggested' my application..."(my words to describe t their thoughts.)

My argument has always been that if the cited inventions are <u>not</u> radio in that they cannot be radiated through space, then they cannot be used as anticipating inventions.

Further, my patent specifically states: "...and pertaining in particular to systems called Amplitude Modulation..."(claim 1). This exclude all patents which are not "AM" or cannot be radiated through space. The Courts have totally ignored my pleas

and have not in any manner responded with any argument or rebuttal of this statement.

3. The Patent Office et al have persistently ignored the correct definition of the word "carrier" which is of prime importance to my case. The word "carrier" has many different meanings to many different people depending upon their walk of life. The Patent Office et al persists in their definition that a "carrier" must convey, or carry, something else.(they cited Webster's definition to me and this does not fit radio terminology.) Such is not the case in my invention. I had adherred to the word as it was understood 50-years ago. Today, 1974, we know that the object we called the "carrier" in systems called "AM" radio does not carry. It is evident no intelligent decision can ever be rendered until we agree on semantics.

4. My patent application relies wholly on my new theories on radio. The patent office has constantly stated that:"...regardless of new theories, the idea is still present." To me that is as ridiculous as saying that the man who first used a whale-oil lamp anticipated the electric bulb! (different) principles altogether, but the idea of light is the same!) It is as unworthy an argument as stating that the 33 sons and 28 daughters of Eve and Adam anticipated all that we do today!

5. The Patent Office et al have not recognized exactly what my invention is. They have based all their arguments on the rather simple diodes and resistors in the switching circuit and in not seeing the true invention lies in my new theories and their application to the whole radio wave.

I also remind this Court that the thousands upon thousands of different circuits used in radio are made up in the main of only four components; condensers, resistors, coils, and amplifying devices. Circuits can easily resemble one another, and yet be vastly different in their concept and operation. No other circuit will do what my simplified circuit will do.

The circuit, and its operation, is the result of my dissection of the invisible radio wave. I used intuitive powers, the art of inductive reasoning, and the 40 years of practical observation of the whole radio scene in my working career.

All this enabled me to label various parts of a radio wave and to reason what to do with them. The actual diodes, etc., are only ancillary to the actual invention- not the invention as the Courts say.

6. The failure of the Patent Office to understand my claim one (1) is caused by total ignorance of radio engineering. Two persons, such as myself and the courts, are never going to reach an agreement if one party is oriented toward the legal side and the other toward matters technical. My claim one (1) is simple in language, but complex in import. An anology to this simple, direct, broad claim resides in the fact that mankind explains the simple dot (.) in the most complex language, vis. algebra, geometry, etc., and the most complex item of all, the human brain, in the most simple terms!

7. Even a cursory review of my case will indicate that only the original arguments have been heard and none of the real issues have been explored. All three (3) courts have only reiterated and never deviated

from the first rejection by the Patent office. This means the only difference between the Patent Office and the other courts is in the number of judges. The only real difference in arguments occured after the U.S. CCPA read my brief they stated that one of the inventions could also be connected to a telephone wire(Van der Meulen) My claim one (1) mentions the use of wires too. My rebuttal pointed out that <u>any</u> circuit cited against mine must first qualify (as my claim states) to be first a system that is known as AM. I had also pointed out that anything can be connected to a telephone wire, but this does not make it in the same line of thought as mine at all.

To me it matters little if one ignorant judge (in matters technical),

judges my invention, or three such persons, or even five as in the USCCPA. Sheer numbers do not lend validity to these decisions. It is self-evident with only a perusal of my case that not one word of my arguments have registered and furthermore I have been totally ignored as not worthy to be heard. They sweep my technical truths under the rug, so to speak, and cover them with legal terminology which have no place in an argument of this sort.

I now feel the "awesome power" of the federal courts. They are beholden to no one. They not only have the first say, but the last one as well. If there were equal justice then it would be fitting and proper I should give the patent office two (2) rejects to prove I am wrong! As it is the Patent Office can twice reject me for not dotting an I or crossing a T and I am through! IS THIS JUSTICE?

Appeals Board and the USCCPA are not necessary and have acted in a parrot-like fashion. Not one word of argument has been presented in over six years to combat my assertion that prior inventions must conform to a reasonable definition of having the property to be radiated through space.

Time after time, the courts have only given me a few hours to respond or else I would lose the entire case. Dozens of examples can be shown where they have used this technique. As a matter of fact I only had three days to write my first petition to this court! Yet, with all the hurry-up they impose on me, they take as long as two (2) years to even answer my letters. I have the same feeling I would have if I were to play baseball with another team when they owned the ball, bat, diamond, and gave me two strikes and "I'm out" before I ever got to bat!

NATIONAL CONCERN

Permit me to touch briefly on a few points which should be of National interest. When I first conceived this idea I dwelt for many months on just what to name it, I decided that "AM STEREO SYSTEM" would embrace the idea. As you are aware there are many uses for systems called AMPLITUDE MODULATION. This system is used in facsimile, television, entertainment broadcasting, both domestic and international, navigation, space exploration, and by the military.

The un-obviousness of my invention resides in simple arithmetic, and when the monetary value of the radio stations themselves is considered plus the revenue to be derived from the public in new devices it surely seems reasonable that if my system is obvious it would surely have been utilized before this!

In the United States there are approximately 5100 AM radio stations. Some of the

clear channel stations have a net worth of about $20,000,000. The smallest station might be worth, say, $500,000. Millions upon millions of AM radios are in the hands of the public and they buy more and more everyday. The value to the country and to the industry is beyond me to know or tell. Needless to say the AM radio stations would enjoy prestige if they could broadcast stereo and their business stance would be enhanced and made more competitive, plus the added stimuli (beyond my patent protection) to the record industry to supply more records.

I envision using the sytem of mine to reduce the bandwidth of television from its present width of 6MHz(6,000,000 cycles) to a value of about 100,000 cycles. This means in practical terms that at least 60 more stations could be accomodated in the same space that one now occupies. The present VHF band which includes channels 2 through 13 would be increased to 720 channels. This

it is evident that these additional facilities greatly enhance the economic, educational, cultural, and entertainment aspects of our present system. In the UHF band(14-84) we would increase the number of channels from the present 70 to 4200 channels. The dollar value alone of the added transmitters, bldgs, studios, personnel, and other added avenues is again beyond my scope of knowledge.

My basic idea encompasses all these, but the realization of their practicability will require the resources of many and diverse research laboratories for a long period.

The value to the military would be entirely up to their research skills and imaginations. Wherever there is a need for a plurality of information to be communicated in a narrow space, then it should prove of value. There is also no doubt in my mind that navigation falls within the ken of my disclosure too.

In the field of international broadcasting

it can be used when it is coupled with my new theories on radio reception to abolish what is commonly termed selective fading.

I believe also that the bandwidth of AM radio stations can be reduced and thus adding more channels to the present 107 channels spread from 550 to 1600 KHz.

I envision using my invention in the field of space exploration. At present there is so much interference from infra-red and other cosmic radiations plus the "garbage" from many other sources it is impossible to penetrate our outer space. Even with sophisicated radio-telescopes the range for intelligence-gathering is restricted to an impractical value. The ability to select only the desired signal from all the rest of the interference is embraced in my claim one(1). All other signals are "washed" out.

To reduce this invention of mine to any practical use is, as I stated, a job for a diverse group of technicians and engineers.

I'm sure all will agree that if this invention were obvious it certainly would have been put to use before this. It is so un-obvious that only a very few persons understand what I've been saying and doing. The few who do understand are either physicist or design engineers. It surely is not a step-by-step deal nor one that only a mechanic would recognize.

SUMMATION OF MY ARGUMENTS

In explaining the statement made in the "Questions Presented" in item No. 1 on this paper I further state that two different conditions exist in the pursuance of a patent. One condition is where a Patent Attorney is retained and another when one is not. I adherred to the green patent book of rules for correct procedures to follow. After my second rejection(final) I checked on page No. 19:"...applicant's response is limited to appeal in the case of rejection of any

claim and further amendment is restricted."

The above statement of the rules is in error because it omits several openings which an attorney would have access to.

Over the years of the operation of the Patent Office there has developed a condition whereby the patent attorneys and the examiners have developed their own customs and practices to the exclusion of those of us who must obey only the rules as published in the book. This is not a healthy situation and seems to be contrary to the axiom-A government of laws, and not of men.

In one law book published by the Commerce department in November of 1965 it says under rule 132, page 23:..."Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement together with such information and references as may be useful in judging

of the propriety of continuing the prosecution of his application; and if after receiving such notice,(I did not) the applicant shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention..."

In another law book I found even further statements which indicate I was not treated fairly. This one clearly shows an attorney would HAVE privileges I would not enjoy and he would have the right to amend where I was denied equal rights.

ACTION AFTER FINAL REJECTION: "When a final rejection in an application is received by andattorney, he may, of course, make any amendment which places the application in condition for allowance..."(page 138 in book written by a Mr. Toulmin.)

At this time I call attention to the brief from the Commissioner of Patents in reply to my brief where it is stated on page

7 line 1:"...denied ultimate judical review of that decision may only be had in District Court..." This is in direct contradiction to the rules as stated on page 26 of the blue Patent Book:"

141. "Appeal to Court of Customs & Patent Appeals-an applicant dissatisfied with the decision of the Board of Appeals may appeal to the U.S. Court of Customs & Patent Appeals thereby waiving his right to proceed under section 145 of this title."

The above simply means that my decision was to take my case before the USCCPA and in so doing I knew I had waived my right to justice before any civil court.

This muddled situation, all caused by needless delay, and a clerical error, and compounded by ambiguous rules have made it necessary to petition this Court. I have done everything possible to comply with every rule of the Patent Office. It is

difficult for me to understand this delay in prosecution on a single technicality.

All of my writings over the years have stressed the need for an agreement on definitions of certain words. The most vital word to even a basic understanding of my invention is the word CARRIER. I requested Mr. Harold Kassens, chief Rules & Standards division of FCC to supply me with an up-to-date definition which he did and it appears in the transcript of record and in this appendix.

Legal arguments are based upon words and their meanings. There can be no intelligent decisions made if there is no agreement on the meaning of words. Words which mean one thing in one walk of life, mean entirely something else when applied to another.

In today's world we cannot lump all the sciences of electricity, electronics, and radio itself, into one common title as the courts' have consistently done in my case.

Radio itself has further divisions of sophistry which make each branch:AM,FM, TELEGRAPHY, FAX, TV, etc., vastly different from each other.

The heterogeneity of our complicated modern world requires that each branch of science have a vocabulary of its own. If I were to divide all of our accumulated knowledge, which could be called ELECTRICITY, for want of a better word, into three main categories we could come up with:

1. ELECTRICITY
2. ELECTRONICS
3. RADIO

It will become obvious we cannot import words(as the courts have done) from one branch into another and still retain the correct meanings.

I have persistently adherred to the idea in all my writings that I am only talking about systems which are defined as Amplitude Modulation. There are many facets to the electronic industry alone and many also to

radio. Each category has distinctive and unique characteristics which are common only to themselves. The list is endless of the devices which might fall into one of the three categories. There are literally hundreds we could list under each of the three. This is not necessary to get my meaning across.

The contrast in meanings of words when imported from one category to another is startling. The particular word which I wish to dwell on is the word CARRIER.

A person versed in electricity would use the word CARRIER when he means the iron wire which is used to hold up the more-fragile current-carrying copper wire. A person, on the other hand, versed in ELECTRONICS would use the word CARRIER to mean the current carrying ability of solid-state devices such as transistors. Solid-state terminology does not accept the older electron theory of current flow,

instead, solid-state is explained by an invisible chemistry-action phenomena which says in essence that current flow is accomplished by "holes" which carry current. These "holes" are spoken of as CARRIERS. Thus we have two distinct definitions already.

The phenomonon of WIRELESS (radio) is unique from the other two branches mentioned in that it possesses the ability to be radiated through space. Even though common mathematical laws such as Ohms Law, Kirchoff's Laws, and many more, are common to all three branches, and even though radio relies upon the laws of electricity and electronics for its' operation, there is a sharp division in practical theory when applied to radio. When waves of etheric force are emitted from an antenna and are caused to traverse an unknown substance(not air) this device then becomes vastly different in behavior and bears no relation-

ship to any other branch of science at this point. Radio exist separately from any other science-with its' own laws!

Radio itself is further divided when the different processes of modulation are applied. Each category has its own unique nomenclature and words have far different meanings when applied to any one of them. These words are so different that it is impossible to import them from one category to another and retain the same meaning.

The above lends sustenance to my arguments that if two of the cited inventions(Kidd and Van der Meulen) are <u>not</u> radio in that they cannot be radiated through space, and received, and if the third cited invention(Jenkins) is one known as Frequency Modulation (FM) then it surely follows that none of these can be used or applied to my thinking.

My use of the word CARRIER means exactly what is stated on pages 62-63 of the transcript of record-and no other meaning

can be imported. FCC letter to that effect appended.

I therefore cannot see how any just decision can ever be rendered if there is no understanding of my invention. I have diligently tried to make it easy to comprehend, and I'm sure if correct definitions to certain words were applied the truth will be seen.

This problem due to a lack of knowledge of a given subject must have confronted the court before. I make the point that I could have very easily camouflaged my over-simplified circuit in a maze of electronic double-talk and no one would have been the wiser. If I had done this at first I am now sure I would have obtained the patent long ago.

It was Thomas Edison, who probably knew more about the workings of the Patent Office, who once stated in a letter some facts which are germane to my own case.

Mr. Edison's statement follows:

"Furthermore, it seems to me that scientific disputes should be decided by some court containing at least one or two scientific men-men capable of comprehending the difficulties of its accomplishment,-if justice is ever to be given an inventor. And I think also, that this court should have the power to summon before it and examine any recognized expert in the special art, who might be able to testify to facts for or against the patent, instead of trying to gather the truth from the tedious essays of hired experts, whose depositions are really nothing but sworn statements as arguments.

"The real gist of patent suits is generally very simple. and I have no doubt that any judge of fair intelligence, assisted by one or more scientific advisors could in a couple of days at the most examine all the necessary witnesses; hear all the necessary arguments, and actually decide an ordinary patent suit in a way that would more nearly be just, than can now be done..."

Mr. Edison also stated these salient points which I deem pertinent to my own case:

"...but I think the whole trouble lies with the system in vogue with the Federal Judges, with but few exceptions, do not understand complicated scientific questions.

"...to secure uniformity in the several Federal Circuits and correct errors, it has been proposed to establish a central court of patent appeals in Washington, This

I believe in; but this court should also contain at least two scientific men, who would not be blind to the sophistry of paid experts. Men whose inventions would have created wealth for many..."

I have pointed out that the cited inventions of Kidd and Van der Meulen are not radio and in closing I would like to say that the third cited invention being that of Jenkins has been shown to countless radio engineers and without exception they all agree this is definitely FM-not AM.

This is an interesting invention because it was applied for in 1926 and yet the Patent Office issued a patent to Major Armstron in 1934 for a system of FM in the year 1934-nine years later! Which only proves that all the clerks and librarians in the world are valueless without a thorough knowledge of the.. history of a given subject. Beyond a shadow of a doubt it is Jenkins who.. should get the credit for Frequency modulation and not Major Armstrong!

In the wording of my claims I have tried to not monopolize the entire field and yet hold on to the basic idea. Recognizing always that the basic ingredient of free enterprise is to give free rein for expression of ideas. Thus, others will see an opportunity for themselves.

I am only trying to unlock the door, it is up to the Court to open it.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be granted and if so upon review my five claims which are appended should be rightfully entered in my specifications and that the following three (3) cited inventions be forever removed as being anticipatory of my invention:

KIDD.....2,921,981..Jan 19,1960-NOT RADIO
JENKINS.....1,914,570..Jun20,1933 -NOT "AM"
VAN DER MEULEN2,336,276..Dec 7,1943 -NOT RADIO

Joseph M. Rice
August 20, 1974

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